



TAX BULLETIN 02-2

Virginia Department of Taxation

March 20, 2002

IMPORTANT INFORMATION REGARDING **2001 VIRGINIA INCOME TAX RETURNS**

VIRGINIA INCOME TAX FIXED DATE CONFORMITY

On March 9, 2002, federal legislation that may change how your 2001 federal income tax is calculated was enacted into law. On the same day, the Virginia General Assembly adopted a provision that precludes Virginia from adopting any changes in federal tax law made after December 31, 2001. This notice is intended to provide taxpayers with an update on how to reconcile these legislative developments.

The Department of Taxation has received inquiries requesting guidance with regards to the interaction between the recently enacted "Job Creation and Worker Assistance Act of 2002" and the fixed date conformity language present in the "2002 Amendments to the 2000 Appropriation Act" (2002 House Bill 29, § 3-5.01). The "2002-2004 Appropriation Act" (2002 House Bill 30, § 3-5.03) contains identical fixed date conformity language. The House of Delegates of Virginia and the Senate of Virginia recently passed both House Bills 29 and 30.

The fixed date conformity language specifies that all references in Title 58.1 of the Code of Virginia to the Internal Revenue Code (IRC) refer to the IRC as it existed on December 31, 2001. This means that the Commonwealth does not adopt any changes to the IRC enacted after December 31, 2001. This includes the changes made at the federal level by the "Job Creation and Worker Assistance Act of 2002" and the "Victims of Terrorism Relief Act of 2001."

Within a short amount of time, the department expects the Governor to sign House Bill 29 into law with the fixed date conformity language intact. House Bill 29 will be effective upon the date it is signed by the Governor. In order to avoid confusion between now and when House Bill 29 is enacted, the department advises all affected taxpayers and tax practitioners make the following assumptions:

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- For all taxable year 2001 returns, Virginia taxable income should be computed in accordance with federal tax laws as they existed on December 31, 2001. Retroactive changes made to federal law after December 31, 2001, should not be taken into consideration when computing Virginia taxable income. For example, the 30% bonus depreciation allowed for all property placed in service after September 10, 2001, **may not** be included in the calculation of Virginia taxable income as this provision was enacted after December 31, 2001.

If a taxpayer has included the 30% bonus depreciation in the calculation of their federal taxable or adjusted gross income, the 30% bonus depreciation must be added back to federal taxable or adjusted gross income to determine Virginia taxable income. For corporate income tax purposes, this adjustment should be made as an Other addition on Line 28 of Form 500 and for individuals as an Other addition with Code 13 on Line 2 of Schedule ADJ for Form 760. For all other taxpayers subject to a Virginia income tax who may be affected by this provision (filing a Form 500S, 770, 763 or 760PY), this adjustment should be made as an Other addition on their respective income tax return.

- For all taxable year 2002 estimated payments, all payments should be computed in accordance with federal tax laws as they existed on December 31, 2001. All changes effective for the 2002 taxable year and enacted after December 31, 2001, should not be taken into consideration when computing the appropriate amount of each payment. For example, the 30% bonus depreciation allowed for all property placed in service after September 10, 2001, **may not** be included in the calculation of the appropriate amount of each estimated payment as this provision was enacted after December 31, 2001.
- For Net Operating Losses (NOL) generated in taxable years ending in 2001 and 2002, the "Job Creation and Worker Assistance Act of 2002" extends the general carryback period from two years to five years. Because this extended carryback was enacted after December 31, 2001, any carryback of an NOL generated in taxable years ending in 2001 and 2002 will not be permitted beyond a carryback period of two years. In accordance with this, amended returns that include a carryback of an NOL beyond two years as a result of this legislation will not be accepted.

You may also want to note that language in House Bills 29 and 30 states that during the 2003 session, the General Assembly will review and consider the adoption of any changes made to federal income tax law enacted in 2002 that would affect Virginia taxation and will consider whether Virginia policy will continue a policy of fixed date conformity.

If you have any additional questions, please contact us at (804) 367-8037.